

# EXHIBIT B

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Attorneys for Plaintiff  
and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

GAIL HAHN, individually and on behalf of all other  
similarly situated California Residents

Plaintiff,

v.

MESSAGE ENVY FRANCHISING, LLC, a Delaware  
Limited Liability Company; MESSAGE ENVY, LLC,  
a Delaware Limited Liability Company,

Defendants.

FILED  
CIVIL BUSINESS  
CENTRAL DIVISION

2011 DEC -7 P

CLERK-SUPERIOR  
SAN DIEGO COUNTY

FILED  
Clerk of the Superior Court

DEC 07 2011

Case No. 37-2011-00102080-CU-BT-CTL

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF CAL. BUS. &  
PROF. CODE § 17200 FOR  
"UNLAWFUL" BUSINESS  
PRACTICES
- (2) VIOLATION OF CAL. BUS. &  
PROF. CODE § 17200 FOR  
"UNFAIR" BUSINESS PRACTICES
- (3) VIOLATION OF THE IMPLIED  
COVENANT OF GOOD FAITH  
AND FAIR DEALING

**JURY TRIAL DEMANDED**

1 Plaintiff Gail Hahn ("Plaintiff") alleges as to herself based on her own experience, and as to  
2 all other allegations, based upon the investigation of counsel, which included, *inter alia*, a review of  
3 complaints, reports, advisories, press releases, and media reports about defendants Massage Envy  
4 Franchising, LLC and Massage Envy, LLC (collectively "Massage Envy" or "Defendants").

5 **I. INTRODUCTION**

6 1. Massage Envy is a membership based massage franchise that allows its consumer  
7 members to receive one fifty minute massage per month, in consideration for a monthly fee of  
8 approximately \$60.00. Any unused, paid massages are available for Plaintiff and the Class<sup>1</sup> to  
9 redeem at any time thereafter, provided the Class member's account with Massage Envy remains  
10 paid-current. When Class members fail to remain current on monthly payments, all previously  
11 paid-for massages that have not been redeemed are summarily and irreversibly forfeited.

12 2. Massage Envy's contractual forfeiture of paid-for massages upon Class members'  
13 failure to make timely payments constitute penalty liquidated damages improperly within consumer  
14 contracts, as prohibited by California Civil Code § 1671(c) and (d). Massage Envy's forfeiture of  
15 accrued Class member benefits is thus an "unlawful" and "unfair" business practice violating  
16 California's Unfair Competition Law (the "UCL," CAL. BUS. & PROF. CODE § 17200 *et seq.*), as  
17 well as a breach of the implied covenant of good faith and fair dealing by Defendants. This class  
18 action accordingly seeks restitution and/or reinstatement of forfeited benefits, injunctive relief  
19 preventing the reoccurrence of Defendants' improper conduct, and such other relief as allowed by  
20 law or equity.

21 **II. JURISDICTION AND VENUE**

22 3. This Court has jurisdiction over this action pursuant to Article 6, § 10 of the  
23 California Constitution, California Business and Professions Code § 17203, Civil Code § 1780(d)  
24 and Code of Civil Procedure §§ 382 and 410.10.

25  
26 <sup>1</sup> As specified in paragraph 23 below, the Class pled herein is defined as: "All California  
27 residents, from December 7, 2007 to the present, who were enrolled in a Massage Envy membership  
28 program and forfeited paid-for massages because they did not keep their membership current by  
making timely payments."

1           4.     This Court has jurisdiction over Defendants because it they are registered to conduct,  
2 and do conduct, substantial business within California and San Diego including the sale of  
3 consumer massage services to Plaintiff and the California Class.

4           5.     Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because  
5 Plaintiff contracted with Defendant to perform massage services in this County, and a substantial or  
6 significant portion of the conduct complained of herein occurred and continues to occur within this  
7 County. Massage Envy operates retail massage studios in this County and, Defendant's improper  
8 business practices and wrongful acts occurred, and continue to occur in San Diego County.

9 **III.   PARTIES**

10 **A.     PLAINTIFF'S EXPERIENCE WITH DEFENDANT**

11           6.     Plaintiff Gail Hahn is, and at all times relevant hereto was, a resident of Lakeside,  
12 California, County of San Diego, and a citizen of California.

13           7.     On or about September 13, 2008, Plaintiff signed a standardized contract with  
14 Massage Envy that provided for one \$59.00 massage per month. Plaintiff's contract with Massage  
15 Envy had an initial term of 12 months (from September 13, 2008 until October 13, 2009), with an  
16 automatic renewal clause that continued the contract month-to-month until cancelled.

17           8.     As specified by the contract, Plaintiff was charged and paid for approximately  
18 twenty three (23) massages, once each month from September 2008 through August 2010.  
19 However, Plaintiff redeemed approximately two (2) of the massages that she paid for prior to  
20 cancellation of her membership on or about February 2009.

21           9.     On or about February 2009, Plaintiff called her Massage Envy clinic to cancel her  
22 contract, and was informed that her membership with Massage Envy was cancelled. However,  
23 monthly massage charges continued to appear on Plaintiff's credit card statement. On or about  
24 March 2009, Plaintiff was told by her Massage Envy clinic that they did not have record of  
25 Plaintiff's cancellation, and that Plaintiff would have to provide a written request to cancel her  
26 contract. On or about March 2009, Plaintiff complied and sent a letter to her Massage Envy clinic  
27 requesting her contract be cancelled. Massage Envy refused to cancel Plaintiff's contract despite  
28 Plaintiff's clear compliance with the cancellation procedures in the contract. Plaintiff subsequently

1 refused to authorize further Massage Envy charges to her credit card. Defendant then forwarded  
2 Plaintiff's purported "debt" for collections activities. Plaintiff has been refused redemption of the  
3 massages she previously bought. Plaintiff has accordingly experienced loss, cost, damage and  
4 expense in California as a direct and proximate result of Defendants' practices as complained of  
5 herein.

6 10. Plaintiff's contract with Massage Envy does not contain an arbitration clause.

7 **B. DEFENDANTS**

8 11. Defendant Massage Envy Franchising, LLC ("Massage Franchising") is a Delaware  
9 Limited Liability Company with its principal place of business at 14350 North 87<sup>th</sup> Street, Suite  
10 200, Scottsdale Arizona, 85260. Massage Franchising is the franchisor and principal for all  
11 Massage Envy clinics in California. Massage Franchising contractually requires all the Massage  
12 Envy clinics in California to include certain material terms in membership agreements, including  
13 the requirement that paid-for massages be forfeited if a customer's membership is not paid current.  
14 Massage Franchising owns all customer accounts and corresponding information, and permits  
15 customers to redeem their paid massages at any Massage Envy clinic in the nation. In addition,  
16 Massage Franchising maintains operational control over most, if not all, aspects of its California  
17 clinics, including but not limited to, the "System Standards" applied through Massage Franchising's  
18 "Operations Manual." This Manual governs the standards, specifications, operating procedures and  
19 rules for Massage Envy clinics including, all products and services clinics can (and cannot) sell,  
20 pricing of goods and services, location (and relocation) of clinics, hiring of real estate broker(s) and  
21 clinic lease or purchase terms, staffing levels, employee qualifications and training protocols, dress  
22 and appearance standards for employees, and marketing protocols. In addition, the Massage Envy  
23 Franchise Agreement gives Massage Franchising the right to cancel clinics' Franchise Agreement if  
24 they do not continually maintain Massage Envy's prescribed standards.

25 12. Massage Franchising is the successor in interest to Massage Envy Limited, LLC,  
26 founded as an Arizona LLC in 2002, that franchised the California clinics from February 2003  
27 through December 2009. In 2008, Massage Envy Limited LLC was sold to Veria Network, a Texas  
28 subsidiary of the Essel Group, a multi-billion-dollar consortium based in India. In January 2010,

1 Veria sold Massage Envy Limited LLC to Sentinal Capital Partners, a private equity firm  
2 headquartered in New York City.

3 13. Defendant Massage Envy, LLC ("Massage LLC") is a Delaware Limited Liability  
4 Company with its principal place of business at 14350 North 87<sup>th</sup> Street, Suite 200, Scottsdale  
5 Arizona, 85260. At all times relevant to this lawsuit, Massage LLC was and is the direct parent  
6 corporation of defendant Massage Franchising, controlling each facet of Massage Franchising's  
7 business and management operations including broad policy decisions, routine matters and day-to-  
8 day functions.

9 **IV. SUBSTANTIVE ALLEGATIONS**

10 14. Massage Envy describes itself as a "pioneer and national leader of affordable  
11 massage and spa services." In 2002, Massage Envy created a massage business based upon the  
12 "health club" membership model, whereby Class members pay a fee ranging from \$49 to \$59 per  
13 month. In exchange, a massage is purchased.

14 15. Massage Envy is the world's largest employer of licensed/registered massage  
15 therapists, with more than 16,000 therapists providing over 250,000 massages every week. Massage  
16 Envy claims to have provided over 30 million massages, in over 700 clinics in the United States,  
17 making it the nation's largest massage chain. Massage Envy has over 1 million members at clinics  
18 in 44 states, with approximately 132 Massage Envy locations in California.

19 16. When a prospective customer first visits a Massage Envy clinic, they are offered a  
20 massage at an introductory price. After the potential customer has received their massage,  
21 Defendants' protocol is to offer the customer a Massage Envy membership. To receive the  
22 membership rate for massages, the potential customer must sign the standardized Massage Envy  
23 contract (the "Membership Agreement"), that is offered as a one-time, take it or leave it  
24 opportunity.

25 17. Plaintiff and each member of the Class have signed a Massage Envy Membership  
26 Agreement for personal, family, or household purposes. The Membership Agreement for Plaintiff  
27 provides:  
28



1 Your first monthly payment will be due on October 14, 2008 and then recur the same  
2 day each month hereafter until your membership expires or is terminated in  
accordance with this agreement.

3 \* \* \*

4 Your membership is auto-renewable. Following the initial term, your membership  
5 will automatically continue on a month-to-month basis at \$59.00 per month until your  
membership is cancelled or terminated as provided by the terms and conditions in this  
agreement.

6 You have the entire term of the membership agreement to use all pre-paid massages.  
7 You may continue to redeem your pre-paid massages after the initial term of the  
membership as long as your membership has been renewed and is current.

8 \* \* \*

9 Your Dues Based membership entitles you to (1) one hour massage session in clinic  
per month during the term of your membership.

10 \* \* \*

11 Your membership services must be active in order to redeem any membership  
12 services including membership massages.

13 \* \* \*

14 You agree to pay us for the membership, goods and services according to the  
15 payment schedule.

16 \* \* \*

17 Canceling your membership. You may cancel this membership during the original  
18 term in the event that: (a) the member permanently relocates his or her residence  
more than a 25 mile radius from any Massage Envy clinic; or (b) a physician certifies  
that a member is permanently disabled or unable to avail himself or herself of  
19 massage services. All cancellation requests MUST be accompanied by written proof  
20 of relocation (i.e. Mortgage or Rental agreement, utility bill, car insurance, etc.) or  
21 submission of Doctor's note if medical reason is stated. Upon approval of your  
22 cancellation during the initial membership term, you will be relieved from making  
23 any future membership dues payments. ... You are responsible for any and all  
24 membership fees incurred until you cancel your membership in accordance with the  
25 terms of this agreement.

26 We reserve the right to terminate or deny reenrollment for an indeterminate amount  
27 of time if a customer has an unsatisfactory payment history.

28 The Massage Envy Membership Agreement of each Class member is identical or functionally  
identical in its material terms. Massage Envy uniformly interprets its Membership Agreement to  
provide that if a Class member has not paid all charges when due, they cannot redeem any pre-paid  
massages until all past-due membership charges have been paid. If a member does not pay all past-  
due membership charges (which continue to accrue), they forfeit all paid-for massages.<sup>2</sup>

<sup>2</sup> This is reinforced by Massage Envy's website, which provides that "You have the entire  
length of your membership to use your membership services as long as your account is not frozen  
and in good standing. Any unused services will expire should you elect to cancel or not to renew  
your membership." See "<http://www.massageenvy.com/membership/membership-terms-and-conditions.aspx>"

1           18. Class members' failure to make timely payments constitutes a breach of the  
2 Membership Agreement. The Membership Agreement's provision for forfeiture of paid massages  
3 are "liquidated damages" because they are triggered by Class members' failure to perform the  
4 contractual covenant of timely payment, and because Massage Envy's records allow computation of  
5 the dollar value of massages forfeited.

6           19. Defendants made no attempt to determine what their damages would be in the event  
7 of untimely payment by Class members. Instead, the forfeiture clause in Defendants' Membership  
8 Agreement was adopted and utilized by Defendants to compel timely payment, penalize non-  
9 payment, and as a means to unjustly increase revenue without having to provide massage services  
10 (i.e., as a means to generate unfair profits).

11           20. Forfeiture is compelled without regard, and disproportionate to the actual damages  
12 (if any) sustained by Massage Envy in the event of untimely payment. This is because Massage  
13 Envy suffers no actual damage when consumers cancel their Membership Agreement or fail to  
14 make timely payments pursuant to the Membership Agreement.

15           21. The value of the forfeited massages bear no relation to any damage that could  
16 reasonably be anticipated by Massage Envy, as Class members' failure to timely pay for *additional*  
17 massages when due, are separate obligations from *past, paid* massages. There is no justification for  
18 Massage Envy's forfeiture procedures other than to reap unjust profits at consumer expense.

19           22. Plaintiff and each member of the Class have paid Massage Envy for massages that  
20 they cannot redeem because their memberships with Defendants are no longer paid current.  
21 Massage Envy's practice of forfeiting paid-for customer massages is the source of thousands of  
22 internet complaints.

23 **V. CLASS ACTION ALLEGATIONS**

24           23. Plaintiff brings this action as a class action pursuant to California Code of Civil 382  
25 for the following Class of persons:

26 All California residents, from December 7, 2007 to the present, who were  
27 enrolled in a Massage Envy membership program and forfeited paid-for massages  
28 because they did not keep their membership current by making timely payments.



1 Excluded from the Class are all legal entities, Defendants herein and any person, firm, trust,  
2 corporation, or other entity related to or affiliated with any defendant, as well as any judge, justice  
3 or judicial officer presiding over this matter and members of their immediate families and judicial  
4 staff.

5       24. The members of the Class are so numerous that joinder of all Class members is  
6 impracticable. While the exact number of Class members is unknown to Plaintiff at this time and  
7 will be ascertained through appropriate discovery, Plaintiff is informed and believes that there are  
8 thousands of members in the proposed Class. Defendants require each of their California clinics to  
9 install Massage Envy's proprietary software called "Millennium 2009" (or the current update),  
10 which Massage Franchising sublicenses to its California clinics. This software is used for member  
11 management and accounting, point of sale, cash register, and credit card processing functions.  
12 Massage Envy has independent, unlimited access to the information generated and tracked by the  
13 computer systems of its California clinics, including information generated from Millennium 2009  
14 (or the current update). Thus, Defendants can readily obtain information to identify members of the  
15 Class, as well as the number of massages that Class members have forfeited, such that members of  
16 the Class can be identified from records maintained by Defendants.

17       25. Each Class member paid Defendants a certain number of monthly membership  
18 charges, from which the number of redeemed massages can be deducted to determine Class-wide  
19 restitution and/or damages and/or reinstated massages as maintained in Defendants' records.

20       26. Plaintiff's claims are typical of the claims of the other members of the Class. All  
21 members of the Class have been and/or continue to be similarly affected by Defendants' wrongful  
22 conduct as complained of herein, in violation of California law. Plaintiff has no interests adverse to  
23 the Class.

24       27. Plaintiff will fairly and adequately protect the Class members' interests and has  
25 retained counsel competent and experienced in consumer class action lawsuits and complex  
26 litigation.

27       28. Defendants have acted with respect to the Class in a manner generally applicable to  
28 each Class member. Common questions of law and fact exist as to all Class members and  
CLASS ACTION COMPLAINT

1 predominate over any questions wholly affecting individual Class members. There is a well-defined  
2 community of interest in the questions of law and fact involved in the action, which affect all Class  
3 members. Among the questions of law and fact common to the Class are, *inter alia*:

4 (a) Whether Defendants are parties to membership agreements with Plaintiff and the  
5 Class and/or are liable for the actions of their California clinics;

6 (b) Whether Defendants' contractual clauses requiring forfeiture of paid massages are  
7 (void) liquidated damage clauses within the meaning of California Civil Code § 1671;

8 (c) Whether Defendants' recurring billing for non-current accounts for massages that  
9 cannot be used by Plaintiff and the Class because their accounts are not paid current constitute  
10 (void) liquidated damage clauses within the meaning of California Civil Code § 1671;

11 (d) Whether Defendants' contractual forfeiture of paid massages constitutes "unlawful"  
12 or "unfair" business acts or practices under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17200,  
13 including:

14 (i) Whether Defendants' contractual forfeiture of paid massages constitute  
15 "unfair" business practices because: consumer injury outweighs any countervailing benefits  
16 to consumers or competition, and because such injury could not be reasonably avoided by  
17 consumers;

18 (ii) Whether Defendants' contractual forfeiture of paid massages constitute  
19 "unlawful" or "unfair" business practices by violating established public policy as embodied  
20 by California Civil Code § 1671;

21 (iii) Whether Defendants' contractual forfeiture of paid massages constitute  
22 "unfair" business practices because they are immoral, unethical, oppressive, unscrupulous or  
23 substantially injurious to consumers;

24 (e) The nature and extent of damages, equitable remedies, and injunctive relief to which  
25 Plaintiff and the Class are entitled;

26 (f) Whether Plaintiff and the Class should be awarded attorneys' fees and the costs of  
27 suit for Defendants' violations of the UCL, and Code of Civil Procedure § 1671;

29. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in managing this action as a class action.

30. Defendants have acted on grounds generally applicable to the entire Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

**FIRST CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
FOR "UNLAWFUL" BUSINESS PRACTICES IN VIOLATION OF THE UCL**

31. Plaintiff incorporates by reference and realleges each and every paragraph alleged above as though fully alleged herein.

32. California Business and Professions Code § 17200, *et seq.* prohibits acts of unfair competition which includes "unlawful . . . business act[s] or practice[s]." The contractual requirement in Plaintiff and each member of the Class' Membership Agreement forfeiting paid-for massages in the event their account is not current, constitutes void liquidated damages in consumer contracts pursuant to California Civil Code § 1671 subsections (c) and (d), and are therefore "unlawful" and "unfair" business practices in violation of the UCL.

33. The contractual requirement in Plaintiff and each member of the Class' Membership Agreement forfeiting paid-for massages in the event of failure to keep their account current, constitutes an unconscionable contract clause pursuant to California Civil Code § 1670.5, and is therefore an "unlawful" and "unfair" business practice in violation of the UCL.

34. As a direct and proximate result of Defendants' "unlawful" business practices as alleged herein, Plaintiff has been wrongfully deprived of money or property. Plaintiff suffered injury-in-fact as a result of Defendants' forfeiture of her paid massages by being charged, and paying for, unrefunded Massage Envy membership charges.

35. Accordingly, Defendants received and are in possession of excessive and unjust revenues and profits, and/or have caused Plaintiff and other Class members to lose money or property directly as a result of Defendants' wrongful acts and practices.

36. As a result of the above unlawful acts and practices of the Defendants, Plaintiff, on behalf of herself and all others similarly situated, and as appropriate, on behalf of the general public of the state of California, seeks injunctive relief prohibiting Defendants continuing these wrongful practices, and such other equitable relief, including full restitution of unredeemed massage charges and the disgorgement of all improper revenues and ill-gotten profits derived from their wrongful conduct to the fullest extent permitted by law, and/or reinstatement of forfeited massages. Additionally, Plaintiff requests that the Court award all members of the Class, who were of the attained age of 65 at the time of the Defendants' unlawful forfeiture of massages as alleged herein, to receive a statutory trebling of their restitutionary award pursuant to CAL. CIV. CODE § 3345.

**SECOND CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
FOR "UNFAIR" BUSINESS PRACTICES IN VIOLATION OF THE UCL**

37. Plaintiff incorporates by reference and realleges each and every paragraph alleged above as though fully alleged herein.

38. California Business and Professions Code § 17200, *et seq.* prohibits acts of unfair competition which includes "unfair . . . business act[s] or practice[s]." Defendants contractual forfeiture of Plaintiff and the Class' paid-for massages constitute "unfair" business practices because: the injury to Plaintiff and the Class outweighs any countervailing benefits to consumers or to competition, and because such injury could not be reasonably avoided by Plaintiff and the Class because .

39. Defendants' forfeiture of forfeiture of Plaintiff and the Class' paid-for massages constitute "unfair" business practices by violating established public policy as embodied by California Civil Code sections 1670.5 and 1671, and is otherwise oppressive, unscrupulous, unconscionable, and substantially injurious to Plaintiff and the Class. The gravity of the harm to Plaintiff and the Class outweighs any countervailing benefits to Defendants or to competition.

1       40. Defendants' forfeiture of Plaintiff and the Class' paid massages constitute "unfair"  
2 business practices because law and equity abhor forfeitures.

3       41. As a direct and proximate result of Defendants' "unfair" business practices as  
4 alleged herein, Plaintiff has been wrongfully deprived of money or property. Plaintiff suffered  
5 injury-in-fact as a result of Defendants' forfeiture of her paid massages by being charged, and  
6 paying for, unrefunded Massage Envy membership charges.

7       42. Accordingly, Defendants received and are in possession of excessive and unjust  
8 revenues and profits, and/or have caused Plaintiff and other Class members to lose money or  
9 property directly as a result of Defendants' wrongful acts and practices.

10       43. As a result of the above unlawful acts and practices of the Defendants, Plaintiff, on  
11 behalf of herself and all others similarly situated, and as appropriate, on behalf of the general public  
12 of the state of California, seeks injunctive relief prohibiting Defendants continuing these wrongful  
13 practices, and such other equitable relief, including full restitution of unredeemed massage charges  
14 and the disgorgement of all improper revenues and ill-gotten profits derived from their wrongful  
15 conduct to the fullest extent permitted by law, and/or reinstatement of forfeited massages.  
16 Additionally, Plaintiff requests that the Court award all members of the Class, who were of the  
17 attained age of 65 at the time of the Defendants' unlawful forfeiture of massages as alleged herein,  
18 to receive a statutory trebling of their restitutionary award pursuant to CAL. CIV. CODE § 3345.

19                               **THIRD CAUSE OF ACTION**  
20       **AGAINST ALL DEFENDANTS FOR BREACH OF THE IMPLIED COVENANT OF**  
                                  **GOOD FAITH AND FAIR DEALING**

21       44. Plaintiff incorporates by reference and realleges each and every paragraph alleged  
22 above as though fully alleged herein.

23       45. Plaintiff and each Class member entered into a Membership Agreement with  
24 Massage Envy, which contains as a matter of law an implied covenant of good faith and fair dealing  
25 to deal honestly.

26       46. Plaintiff and each member of the Class paid Massage Envy monthly membership  
27 charges pursuant to the Membership Agreement that they did not use. Plaintiff and each member of  
28



1 the Class are excused from using paid-for massages during the active term of their membership  
2 pursuant to California Civil Code § 1671(c) and (d).

3 47. No additional conditions besides payment of membership charges are contractually  
4 required of Plaintiff and the Class for Defendants to perform the massage services for Plaintiff and  
5 the Class.

6 48. Massage Envy interferes with and frustrates Plaintiff and the Class' ability to redeem  
7 paid-for massages by forfeiting Plaintiff and the Class' paid-for massages when Plaintiff and the  
8 Class memberships are not current.

9 49. As a direct and proximate result of Defendants' breaches of the implied covenant of  
10 good faith and fair dealing, Plaintiff and each member of the Class have sustained loss, cost,  
11 damage and expense in an amount to be proved at the trial of this matter.

12 **VI. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff and the Class pray for relief and judgment as follows:

14 A. For an order declaring that this action is properly maintained as a class action and  
15 certifying a class representative in accordance with Rule 382 of the California Code of Civil  
16 Procedure, appointing Plaintiff as representative for the Class, and appointing Plaintiff's counsel as  
17 Class counsel;

18 B. For an order awarding Plaintiff and the members of the Class damages, restitution  
19 and/or disgorgement, an injunction prohibiting Defendants' forfeiture of massages, and/or other  
20 equitable relief as the Court deems proper, including but not limited to reinstatement of Plaintiff and  
21 the Class' paid massages, and the imposition of a constructive trust upon Defendants' revenues  
22 resulting from the unlawful and unfair business acts and practices described herein;

23 C. For an order enjoining Defendants from continuing to engage in the unlawful and  
24 unfair business acts and practices as alleged herein;

25 D. For treble recovery on all restitutionary awards to senior citizen members of the  
26 Class pursuant to CAL. CIV. CODE § 3345;

27 E. For an order awarding Plaintiff and the members of the Class pre-judgment and post-  
28 judgment interest;



1 F. For an order awarding attorneys' fees and costs of suit, including experts' witness  
2 fees as permitted by law; and

3 G. Such other and further relief as this Court may deem just and proper.

4 **VII. JURY TRIAL DEMAND**

5 Plaintiff demands a trial by jury for all of the claims asserted in this Complaint so triable.

6  
7 Dated: December 7, 2011

Respectfully submitted,

8 FINKELSTEIN & KRINSK LLP

9  
10  
11 By 

William R. Restis

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19 Counsel for Plaintiff and the Class  
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State member, and address): William R. Restis, SBN 246823 FINKELSTEIN & KRINSK, LLP 501 West Broadway, Suite 1250 San Diego, CA 92101 TELEPHONE NO: 619-238-1333 FAX NO: 619-238-5425 L E D ATTORNEY FOR (Name): GAIL HAHN		<b>FOR COURT USE ONLY</b>  FILED CIVIL BUSINESS CENTRAL  2011 DEC -7 P  CLERK-SUPERIOR SAN DIEGO COUNTY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Central		DEC 07 2011 Clerk of the Superior Court	
CASE NAME: GAIL HAHN v. MESSAGE ENVY FRANCHISING, LLC, et al			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: <b>37-2011-00102080-CU-BT-CTL</b>  JUDGE: DEPT.:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- |   |  |   |
|---|--|---|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input checked="" type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400-3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 3
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 12/7/11

William R. Restis

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability *(not asbestos or toxic/environmental)* (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice *(not medical or legal)*  
Other Non-PI/PD/WD Tort (35)  
Employment  
Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract *(not unlawful detainer or wrongful eviction)*  
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage *(not provisionally complex)* (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment *(non-domestic relations)*  
Sister State Judgment  
Administrative Agency Award *(not unpaid taxes)*  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint *(not specified above)* (42)  
Declaratory Relief Only  
Injunctive Relief Only *(non-harassment)*  
Mechanics Lien  
Other Commercial Complaint Case *(non-tort/non-complex)*  
Other Civil Complaint *(non-tort/non-complex)*

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition *(not specified above)* (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition



SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MESSAGE ENVY FRANCHISING, LLC, a Delaware Limited Liability Company; MESSAGE ENVY, LLC, a Delaware Limited Liability Company

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

GAIL HAHN, individually and on behalf of all other similarly situated California Residents

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
CIVIL BUSINESS CLERK  
CENTRAL CLERK

2011 DEC -7 P

CLERK-SUPERIOR  
SAN DIEGO COUNTY  
F L E D

Clerk of the Superior Court

DEC 07 2011

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): San Diego Superior Court  
330 West Broadway  
San Diego, CA 92101

CASE NUMBER  
(Número del Caso):

37-2011-00102080-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
William R. Restis, 501 West Broadway, Ste. 1250, San Diego, CA 92101 (619) 238-1333

DATE: DEC 07 2011  
(Fecha)

Clerk, by  
(Secretario)

M. Jussila

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

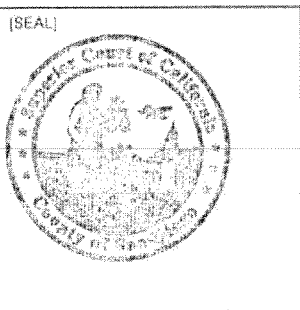
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

- ☐ by personal delivery on (date):



<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7060	
PLAINTIFF(S) / PETITIONER(S): Gail Hahn	
DEFENDANT(S) / RESPONDENT(S): Massage Envy Franchising et.al.	
HAHN VS. MASSAGE ENVY FRANCHISING	
<b>NOTICE OF CASE ASSIGNMENT</b>	CASE NUMBER: 37-2011-00102080-CU-BT-CTL

Judge: Lisa Foster

Department: C-60

**COMPLAINT/PETITION FILED:** 12/07/2011

**ALL CASES MUST COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW,  
EXCEPT FOR PARKING CITATION APPEALS**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, and family law proceedings.

**COMPLAINTS:** Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (SDSC Local Rule 2.1.7)

**CASE MANAGEMENT CONFERENCE:** A Case Management Conference will be set within 150 days of filing the complaint.

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION. IF THE CASE IS ORDERED TO ARBITRATION PURSUANT TO CODE CIV. PROC. 1411.11, THE COSTS OF ARBITRATION WILL BE PAID BY THE COURT PURSUANT TO CODE CIV. PROC. 1141.28.

FOR MORE INFORMATION, SEE THE ATTACHED ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730)

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7060	FOR COURT USE ONLY
PLAINTIFF: Gail Hahn	
DEFENDANT: Massage Envy Franchising et.al.	
Short Title: Hahn vs. Massage Envy Franchising [IMAGED]	
<b>NOTICE OF CASE REASSIGNMENT</b>	CASE NUMBER: 37-2011-00102080-CU-BT-CTL

**Filed :** 12/07/2011

**EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED**

to Judge Gonzalo Curiel, in Department C-60  
 due to the following reason: Judicial Reassignment

All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

Central  
330 West Broadway  
San Diego, CA 92101

**SHORT TITLE:** Hahn vs. Massage Envy Franchising [IMAGED]

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2011-00102080-CU-BT-CTL**

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF CASE REASSIGNMENT was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 01/07/2012. The mailing occurred at Sacramento on 01/09/2012.

Clerk of the Court, by: Sharon Bristow  
S. Bristow, Deputy

JEFFREY R KRINSK  
FINKELSTEIN & KRINSK LLP  
501 W BROADWAY # 1250  
SAN DIEGO, CA 92101-3579

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**CLERK'S CERTIFICATE OF SERVICE BY MAIL**



Superior Court of California  
County of San Diego

NOTICE OF ASSIGNMENT  
TO IMAGING DEPARTMENT

**This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).**

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website. This Program will be expanding to other civil courtrooms over time.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 90 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

All parties are ordered to place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

**Please refer to General Order 072511 for more details.  
The General Order may be obtained from the San Diego  
Superior Court website at:**

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<http://www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/civil2/civilimaging/order072511.pdf>

982.8(2)(N)

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF <u>SAN DIEGO</u></b>	<b>FOR COURT USE ONLY</b>
JUDICIAL DISTRICT OR BRANCH COURT: Central MAILING ADDRESS : 330 W Broadway STREET ADDRESS : 330 W Broadway CITY AND ZIP CODE: San Diego, CA 92101-3827 TELEPHONE NUMBER:: (619) 236-3781	12/07/2011
<b>NOTICE OF HEARING ON REQUEST FOR TRANSFER OR EXTENSION OF TIME FOR RETENTION OF SUPERIOR COURT RECORDS; COURT ORDER; RELEASE AND RECEIPT OF SUPERIOR COURT RECORDS</b>	

TO: \_\_\_\_\_  
*(Name or names of organizations requesting transfer of superior court records to their possession or  
for an extension of the time for retention of the records)*

### NOTICE OF HEARING

1. ☐ A hearing will be held on your request for an order by the presiding judge for **transfer** of some or all of the superior court records to your possession.
2. ☐ A hearing will be held on your request for an order by the presiding judge for an **extension of time** for the destruction of some or all of the superior court records.
3. The hearing will be held:

Date:	Time:	Dept:	Room:
-------	-------	-------	-------

The address of the court is shown above.

4. ☐ No hearing on your request for an order by the presiding judge for transfer of some or all of the superior court records will be held.

### ORDER

#### GOOD CAUSE APPEARING:

1. ☐ Grant request of *(name of organization)*: \_\_\_\_\_ to transfer to your possession
  - ☐ all superior court records specified in the Request for Transfer or Extension of Time for Retention of Superior Court Records
  - ☐ the following superior court records only *(specify records to be transferred)*: \_\_\_\_\_
  - a. The records shall be made reasonably available for inspection to all members of the public and provision shall be made for duplicating the records at cost.
  - b. Costs for transferring the records shall be paid by the requesting party.
2. ☐ Grant request of *(name of organization)*: \_\_\_\_\_ to extend until *(date)*: \_\_\_\_\_ the destruction of
  - ☐ all superior court records specified in the Request for Transfer or Extension of Time for Retention of Superior Court Records
  - ☐ the following superior court records only *(specify records to be held)*: \_\_\_\_\_
3. ☐ Deny request of *(name of organization)*: \_\_\_\_\_ for transfer of some or all of the superior court records to your possession.
4. ☐ Deny request of *(name of organization)*: \_\_\_\_\_ for an extension of time for the destruction of some or all of the superior court records.
5. ☐ Other orders *(specify)*: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
PRESIDING JUDGE OF THE SUPERIOR COURT

(See reverse for Release and Receipt of Superior Court Records)

RELEASE OF SUPERIOR COURT RECORDS

in compliance with the court order of (date):

### Description

Clerk, by \_\_\_\_\_, Deputy

# RECEIPT

I acknowledge receipt of the superior court records described above.

**FOR COURT USE ONLY**

Name and address of organization:

(SIGNATURE)

Fax:

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>		<b>FOR COURT USE ONLY</b>
STREET ADDRESS:	330 West Broadway	
MAILING ADDRESS:	330 West Broadway	
CITY, STATE, & ZIP CODE:	San Diego, CA 92101-3827	
BRANCH NAME:	Central	
PLAINTIFF(S): Gail Hahn		
DEFENDANT(S): Massage Envy Franchising et.al.		
SHORT TITLE: HAHN VS. MESSAGE ENVY FRANCHISING		
<b>STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>		CASE NUMBER: 37-2011-00102080-CU-BT-CTL

Judge: Lisa Foster

Department: C-60

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- |   |  |
|---|--|
| <input type="checkbox"/> Mediation (court-connected)  | <input type="checkbox"/> Non-binding private arbitration   |
| <input type="checkbox"/> Mediation (private)  | <input type="checkbox"/> Binding private arbitration   |
| <input type="checkbox"/> Voluntary settlement conference (private)                            | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private)   | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ |  |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_

Alternate neutral (for court Civil Mediation Program and arbitration only): \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

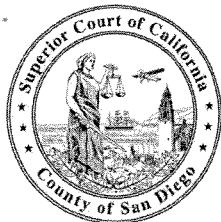
IT IS SO ORDERED.

JUDGE OF THE SUPERIOR COURT

SPSC CIV-359 (Rev 12-10)

### STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION

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## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

### ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2011-00102080-CU-BT-CTL

CASE TITLE: Hahn vs. Massage Envy Franchising [IMAGED]

**NOTICE:** All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

#### **Potential Advantages and Disadvantages of ADR**

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

##### **Potential Advantages**

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

##### **Potential Disadvantages**

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

#### **Most Common Types of ADR**

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

**Mediation:** A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

**Settlement Conference:** A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

**Arbitration:** A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.



**Other ADR Processes:** There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

### **Local ADR Programs for Civil Cases**

**Mediation:** The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

**On-line mediator search and selection:** Go to the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

**Settlement Conference:** The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

**Arbitration:** The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

**More information about court-connected ADR:** Visit the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) or contact the court's Mediation/Arbitration Office at (619) 450-7300.

**Dispute Resolution Programs Act (DRPA) funded ADR Programs:** The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at [www.ncrconline.com](http://www.ncrconline.com) or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at [www.nclifeline.org](http://www.nclifeline.org) or (760) 726-4900.

**Private ADR:** To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

### **Legal Representation and Advice**

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at [www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost).